

ANALYSIS OF ORIGINAL BILL

Author: Alquist Analyst: Colin Stevens Bill Number: AB 1747

Related Bills: See Legislative History Telephone: 845-3036 Introduced Date: 2/3/98

Attorney: Doug Bramhall Sponsor:

SUBJECT: Employer Telecommuting Program Credit

SUMMARY

Under Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would authorize a credit equal to \$200 for each qualified residential telecommuting position, as defined, and \$100 for each qualified telecommuting center position, as defined, created and staffed by the taxpayer's employees in California during the taxable or income year.

EFFECTIVE DATE

This bill would apply to taxable or income years beginning on or after January 1, 1999, and before January 1, 2003.

LEGISLATIVE HISTORY

AB 736 (1995), AB 2378, AB 2592 (1996), AB 1623 (1998).

SPECIFIC FINDINGS

Federal and state laws allow a variety of special tax credits and deductions designed to promote or influence specific taxpayer behavior believed to generate social or economic benefits for the general public. Included in state and federal law are tax incentives designed to promote business, such as credits for research and development of new products, purchasing manufacturing equipment, and providing child care facilities to employees. Neither state nor federal laws allow a deduction or a tax credit for telecommuting. However, to the extent telecommuting expenses are considered ordinary and necessary to conduct the taxpayer's business, expenses would be allowed as a business expense deduction.

Existing state law provides general rules which apply to the division of credits among two or more taxpayers, a husband and wife, and partners. Unless specified, no tax credit may reduce regular tax below the tentative minimum tax (TMT).

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___ X ___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO ___

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director

Gerald H. Goldberg

2/23/98

Agency Secretary

Date

By:

Date:

Under the PITL and the B&CTL, **this bill** would authorize a credit equal to \$200 for each new qualified residential telecommuting position, as defined, and \$100 for each new qualified telecommuting center position created by the taxpayer and staffed by the taxpayer's employees in California during the taxable or income year.

AB 1747 specifies that the number of new qualified residential telecommuting positions and new qualified telecommuting center positions created by the taxpayer would be determined by subtracting the total number of residential telecommuting employees or telecommuting center employees, as applicable, employed by the taxpayer during the immediately preceding year, from the number of those employees employed by the taxpayer during the taxable year in which the credit is allowed.

A residential telecommuting employee would be defined as any of the taxpayer's employees who telecommutes, as defined in the bill, has a written telecommuting arrangement with the taxpayer, and performs at least 40% of his or her normal work week in the employee's residence. An employee who does not have a written residential telecommuting arrangement with the taxpayer, but otherwise meets the requirements for a residential telecommuting employee in the immediately preceding taxable or income year, would be considered a residential telecommuting employee for the previous year for purposes of calculating the credit.

A telecommuting center employee would be defined as an employee of the taxpayer who telecommutes, has a written telecommuting arrangement with the taxpayer and performs 40% of the services that are part of the employee's normal workweek at a telecommuting center. A qualified telecommuting center position is defined in a manner similar to a qualified residential telecommuting position; however, telecommuting center employees would be required to telecommute from a telecommuting center rather than the employee's residence.

This bill would define a telecommuting center as any facility that is all of the following:

- an office which is not the central worksite for any of the taxpayer's employees;
- located in California and is at least nine miles from the taxpayer's central worksite and requires the employee to commute a shorter distance than to the taxpayer's central worksite; and
- where the telecommuters are not regularly supervised at the site in the performance of their duties.

This bill would define a "central worksite" as a location of the taxpayer's business in California where other employees of the taxpayer perform services and where the employee would ordinarily and otherwise report for work and perform the duties required for the job if the employee did not participate in residential telecommuting or telecommuting center arrangements. To qualify for this credit, an employer must have at least one California central worksite.

This bill would define residential telecommuting or telecommuting center arrangement as "a written contract between the taxpayer and employee defining the responsibilities of the taxpayer and employee with respect to a job allowing residential telecommuting or telecommuting center work."

This bill would provide that any unused credit may be carried forward for up to 10 taxable or income years after a credit is allowed. Any credit unused after 10 years would be lost.

The general rules regarding the division of credits would apply, and the credit would not reduce regular tax below TMT for alternative minimum tax (AMT) purposes.

Implementation Considerations

This bill could be implemented during the department's annual updates.

Technical Considerations

Department staff is available to assist in resolving these and other concerns that may arise.

This bill does not define several terms, including "hours of employment" and "regular supervision of employees." This bill provides a method for calculating the number of qualified new residential telecommuting and telecommuting center positions created during a year on the basis of hours employed but does not define this concept or these terms. The credit is applicable to hourly and salaried employees. The hours of salaried employees are not always clear. Clarification of these terms would minimize difficulties related to the department's implementation of this bill.

Language allowing the carryover of the credit for years after the credit is repealed is unnecessary since the general rules in the Revenue and Taxation Code already provide such rules. Amendments 1 and 4 would remove this unnecessary language.

Carryover language in the B&CTL would allow unused credit to be carried over and applied against the "net tax." However, the proper term under the B&CTL is "tax," which is defined under B&CTL Section 23036, rather than "net tax," which is defined in the PITL. Amendments 2 and 3 would correct this technical consideration.

This bill would determine the number of positions by several references to the number of hours telecommuting employees were employed on the basis of 2,000 hours of employment per position. The total number of positions would be rounded down to the nearest whole number. Thus, if several telecommuters worked over 2,000 hours in a year, a credit for an additional position could be generated even though no additional employee was actually employed by the taxpayer. However, the same method of calculation also would result in no credit if a telecommuter was employed less than 2,000 hours during the year.

This bill would deny the credit for telecommuting employees who performed less than 40% of their services telecommuting from within their residence or at a telecommuting center, but whose services at both telecommuting locations exceed 40%.

FISCAL IMPACT

Departmental Costs

This bill is not expected to significantly impact the department's costs.

Tax Revenue Estimate

The revenue losses under the B&CT and PIT laws are estimated as follows:

Estimated Revenue Impact AB 1747			
Taxable and Income years			
Beginning After 12/31/98			
Fiscal Year			
(In Millions)			
1998-99	1999-00	2000-01	2001-02
(\$1)	(\$5)	(\$5)	(\$2)

It is anticipated that approximately 90% of the revenue loss would be attributable to B&CTL with the balance to PIT. Additionally, this estimate does not account for changes in employment, personal income, or gross state product which could result from this proposal.

Tax Revenue Discussion

The estimated losses reflect applied credits in the respective years and were determined in several steps. First, the number of California individuals currently telecommuting was based on an article in CompuServe magazine, February 1995. According to this article, 6 million Americans were estimated to telecommute or approximately 5% of the U.S. workforce. It was assumed that California's distribution would not be materially different from the nation as a whole (5%). This yields an estimate of approximately 670,000 California workers who telecommute. It is assumed that the majority of telecommuters were white-collar workers. Therefore, telecommuters represent approximately 9.1% of the white-collar workforce. By the year 2000, according to a survey conducted by an Oakland-based Institute for the Study of Distributed Work, 15% of the nation's white-collar workers are expected to telecommute. The next step was to identify and exclude the number of individuals telecommuting who work for government or non-profit organizations. This was estimated based on data obtained from the California Statistical Abstract 1997 and the U.S. Statistical Abstract under the assumption that California's distribution would not be materially different from the nation as a whole. This yields an approximate 171,000 telecommuters (approximately 158,000 government employees and 13,000 non-profit organization employees) in the base year or approximately 24% of white-collar workers. The next step was to identify the number of individuals telecommuting who telecommute at least 40% of their work hours. This was based on a study conducted of Contra Costa County employees in 1993, which estimated that the average amount of days spent telecommuting per person was 3.3 days per month. This composite average was then allocated based on a monthly average for individuals into 2, 4, and 8 days

per month to determine the percent of telecommuters within each category. This yields 55%, 35%, and 10% respectively.

Assumptions were then made that the majority of telecommuters would be full-time employees, and the number of individuals telecommuting 40% or greater would double over the next few years. It is assumed that 20% of all projected growth in telecommuting will qualify the employer for an average applied credit of \$100. Adjustments were made to allow for a 2% population growth. Finally, it was assumed that 95% of telecommuters would be residential, and that the balance would be for central telecommuters, the latter for an average applied credit of \$50.

The reason for the larger impact in revenue losses over the first two years is due to base year limitations (existing telecommuters who telecommute under 40% of their time increasing the number of telecommuting days). After this initial transitional period, the number of new individuals qualifying for the credit would decrease and level off at the projected growth in telecommuting.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1747
As Introduced February 3, 1998

AMENDMENT 1

On page 4, strike from line 40 to page 5, line 2

AMENDMENT 2

On page 7, line 40, strike "net tax" and insert:

"tax"

AMENDMENT 3

On page 8, line 1, strike "net tax" and insert:

"tax"

AMENDMENT 4

On page 8, strike lines 6-8.